

**Serial No. 10/642,860
UTILITY PATENT**

**Amend in Resp to Off Act mailed on Dec. 15, 2005
B&D No. TN-1631C**

REMARKS

Applicants have amended Claim 54. Currently in the above-identified application therefore are Claims 48-65.

The Examiner rejected Clams 48, 51 and 58-65 under 35 USC § 102(e) as being anticipated by US Patent No. 5,977,746 ("Hershberger"). This rejection is respectfully traversed.

Claim 48 calls for a battery pack comprising a housing comprising a first portion having a first floor and first and second walls connected to the first floor, and a second portion having a second floor and third and fourth walls connected to the second floor, where the first and second floors are non-coplanar, the first and second portions defining a cavity, the first and second floors being disposed underneath the cavity, a plurality of cells disposed within the cavity of the housing, at least two terminals electrically connected to the cells, the at least two terminals being disposed above the cavity, and a first latching mechanism disposed on the housing for latching the battery pack to a cordless device, said first latching mechanism comprising a first latch and a first button connected to the first latch for moving the first latch between unlatching and latching positions.

Admittedly, Hershberger has a housing defining a cavity, a plurality of cells disposed within the cavity of the housing, at least two terminals disposed above the cavity and electrically connected to the cells, and a first latching mechanism disposed on the housing for latching the battery pack to a cordless device. Hershberger however does not disclose a housing having first and second floors disposed underneath the cavity.

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The Examiner has alleged that Hershberger has two floors: "the floor of member 24 while the second portion is the upper 'floor' of top housing 26—the uppermost portion of 26 on which the first latching mechanism 45 including a button is located." Applicants submit that interpreting the top surface of the Hershberger battery as a "floor" is an unreasonable interpretation.

Nonetheless, to expedite prosecution of the present application, Applicants have defined that the first and second floors to be disposed underneath the cavity.¹ Hershberger shows one of the alleged two floors to be above the cavity.

By contradistinction, Claim 48 calls for "a housing ...defining a cavity, the first and second floors being disposed underneath the cavity." Since Hershberger does not show both floors to be disposed underneath the cavity, Hershberger cannot anticipate Claims 48 and its dependent claims.

The Examiner rejected Claims 48-65 under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of US Patent No. 6,641,950. In response, Applicants promise to file a terminal disclaimer upon allowance of the claims, rendering the present rejection moot.

Applicants believe the application to be in condition for formal allowance. Accordingly, allowance of Claims 48-65 is respectfully requested.

¹ Applicants submit that such amendment only makes explicit what was already implicit in the definition of "floor." Accordingly, such amendment should not be considered a narrowing amendment under the Festo progeny.

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No fee is believed to be due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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